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STATE OF MICHIGAN
30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM
CIVIL DIVISION

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, and THE
POLICE AND FIRE RETIREMENT SYSTEM
OF THE CITY OF DETROIT,

Plaintiffs,

v

Case No. 13-768-CZ
Hon. Rosemarie Aquilina

KEVYN D. ORR, in his official capacity
as the EMERGENCY MANAGER OF THE CITY OF
DETROIT, and RICHARD SNYDER, in his
official capacity as the GOVERNOR OF THE
STATE OF MICHIGAN,

Defendants.

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs,

v

Case No. 13-734-CZ
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN; RICHARD
SNYDER, as Governor of the State
of Michigan; and ANDY DILLON,
as Treasurer of the State of
Michigan,

Defendants.

ROBBIE FLOWERS, MICHAEL WELLS,
JANET WHITSON, MARY WASHINGTON,
and BRUCE GOLDMAN,

Plaintiffs,

v

Case No. 13-729-CZ
Hon. Rosemarie Aquilina

RICK SNYDER, as the Governor of the
State of Michigan; ANDY DILLON, as
the Treasurer of the State of Michigan;
and the STATE OF MICHIGAN,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

1 BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE
2 Ingham County, Michigan - Thursday, July 18, 2013
3

4 APPEARANCES:

5 For Plaintiffs Retirement Systems:

6 RONALD A. KING (P45088)
7 MICHAEL J. PATTWELL (P72419)
8 CLARK HILL PLC
9 212 East Grand River Ave.
10 Lansing, MI 48906

11 For Plaintiffs Webster, et al.:

12 JOHN R. CANZANO (P30417)
13 Smith & Radtke, PC
14 400 Galleria Officentre, Ste. 117
15 Southfield, MI 48034

16 For Plaintiffs Flowers, et al.:

17 WILLIAM A. WERTHEIMER (P26275)
18 Attorney at Law
19 30515 Timberbrook Lane
20 Bingham Farms, MI 48025

21 For the Defendants:

22 THOMAS QUASARANO (P27982)
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26 REPORTED BY:

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None

None

1 Ingham County, Michigan
2 Thursday, July 18, 2013 - At 4:15 p.m.
3 MR. KING: Good afternoon.
4 THE COURT: Good afternoon. We have everybody
5 here?
6 MR. KING: They are.
7 THE COURT: All right. This is Docket
8 13-768-CZ, the General Retirement System of the City of
9 Detroit and the Police and Fire Retirement System of the
10 City of Detroit versus Kevin D. Orr, in his official
11 capacity as the Emergency Manager of the City of Detroit,
12 and Richard Snyder, in his official capacity as the
13 Governor of the State of Michigan.
14 Counsel, your appearances for the record.
15 MR. KING: Good afternoon, your Honor. Ron
16 King with Clark Hill on behalf of the Plaintiffs, the
17 General Retirement System of the City of Detroit and the
18 Police and Fire Retirement System of the City of Detroit.
19 THE COURT: Welcome.
20 MR. KING: Thank you.
21 MR. QUASARANO: Your Honor, if I may, Thomas
22 Quasarano, Assistant Attorney General, that will be
23 appearing in this case on behalf of the Defendant. I
24 believe the Defendant was served yesterday. We have not
25 received a request for representation, but I'm very

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1 likely going to be asked to represent the Governor.
2 THE COURT: Sir?
3 MR. WERTHEIMER: Excuse me, your Honor,
4 William Wertheimer. I apologize for my dress.
5 THE COURT: No problem. I know it's last
6 minute. I don't care how people are dressed. It's more
7 important that you are here.
8 MR. WERTHEIMER: Thank you, your Honor. I was
9 here to file my reply brief today for the Monday hearing.
10 I am now here knowing that this motion has been filed,
11 and I wanted to enter my appearance.
12 THE COURT: All right. You may have a seat.
13 There is plenty of room for all.
14 MR. WERTHEIMER: Thank you.
15 MR. CANZANO: Your Honor, excuse me, John
16 Canzano, Plaintiffs' attorney in the Webster case. Same
17 as Mr. Wertheimer, we just found out about this. I'm
18 here. My reply brief is being filed. I have a judge's
19 copy here somewhere.
20 THE COURT: All right. Have a seat.
21 MR. KING: Your Honor --
22 THE COURT: Anybody else?
23 MR. PATTWELL: Your Honor, Michael Pattwell
24 from Clark Hill on behalf of Plaintiffs.
25 THE COURT: Thank you.

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1 C. ...?
2 MR. KING: Your Honor, Ron King again on behalf
3 of the Plaintiffs, the Detroit Retirement Systems. We
4 might need to beg the Court's indulgence. While we
5 appreciate that you have seen us on very short notice,
6 we've been advised that the City has filed, and we're
7 pulling it up on the electronic filing system, so we
8 might need a few minutes here to figure out our very next
9 step.
10 THE COURT: Okay.
11 MR. KING: Because the effect of a bankruptcy
12 filing, if, in fact, that's -- we're trying to conform
13 that. We think, in fact, it has been filed here within
14 the last half hour. So we probably need about a
15 ten-minute recess here, if the Court would indulge us. I
16 know you have another matter.
17 THE COURT: Do we want to make a phone call?
18 MR. KING: Yeah. We can, but we're pretty --
19 THE COURT: Well, here's the thing: If they
20 haven't filed, we need to hurry up and proceed. If they
21 have filed --
22 MR. KING: We're pretty confident that they
23 filed.
24 Right?
25 I mean, we're pulling it up. Yeah. It's been

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1 confirmed. So I'm not sure where that leaves us with
2 this proceeding because it's going to be pretty hard to
3 undue. It's been done.
4 MR. WERTHEIMER: There is no automatic stay in
5 this.
6 MR. KING: Yeah. What we're here for -- the
7 really --
8 What counsel is saying is there is no automatic
9 stay with respect to this proceeding. So in our
10 judgment, this matter will proceed. What you have before
11 you, however, is a motion for temporary restraining order
12 to enjoin certain conduct that's already occurred. So
13 I'm not sure that we really have a lot of business in
14 front of the Court at this moment, but I would like to
15 just confer for about ten minutes on that issue because
16 we will proceed in the case. And if we're here and you
17 want to take the time to set some sort of expedited
18 briefing schedule, we could do that also.
19 It's quite likely that you, your Honor, will be
20 able to make a ruling on the merits of this case in
21 advance of whatever occurs in the context of a Chapter 9
22 filing.
23 THE COURT: I plan on making a ruling on
24 Monday. I could make a ruling tomorrow, if push came to
25 shove, but Monday would probably be soon enough. I am

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1 confident that the bankruptcy court won't act as quickly
2 as I will.

3 MR. KING: Yeah. I'm not sure, but we'll see.
4 I mean, there might -- but, nevertheless, so we should --
5 If you're prepared to rule on the merits on
6 Monday, again I'm not sure what -- if there is much
7 business for us left to do before the Court today.

8 THE COURT: Unless some kind of -- I don't
9 really have any authority over them, so.

10 MR. KING: Right.

11 THE COURT: I don't think anything --
12 Counsel?

13 MR. WERTHEIMER: Your Honor, the motion that's
14 up for Monday, our motion at least that's up for Monday,
15 is a request for a preliminary injunction to enjoin the
16 Governor. We have no evidence the Governor has
17 authorized any bankruptcy, and we would not only want to
18 go forward on Monday but ask that the motion for
19 preliminary injunction be moved up to now, hopefully, to
20 tomorrow morning if the Court will not hear it now. But
21 I don't think there is any reason why the Court cannot
22 hear our motion for preliminary injunction.

23 I'm not talking about in terms of the Court's
24 preparedness but in terms of the apparent filing. They
25 may have filed. But nobody -- I asked the Governor's

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1 Office before we came in here -- er, the Attorney General
2 whether they could make any representations to me that
3 would obviate the need for me going forward, and they
4 could not.

5 So we've got a written, fully briefed request/
6 motion for preliminary injunction. The Attorney
7 General's Office has briefed it. Time is obviously of
8 the essence. I would suggest that the Court hear our
9 motion to preliminarily enjoin the Governor authorizing a
10 bankruptcy now.

11 MR. CANZANO: Your Honor, I would make
12 essentially the same request except that our motion,
13 although it seeks preliminary injunctive relief in the
14 alternative, it primarily seeks a final declaratory
15 judgment that what has just happened, apparently, is
16 unconstitutional, and that is ready for a final decision
17 we were saying on Monday. We have a reply brief that has
18 just been filed, and we would -- we could -- this Court
19 could issue that order immediately, and I don't know what
20 the consequences for the bankruptcy court would be,
21 necessarily, but I think it would -- it might make a
22 difference.

23 MR. WERTHEIMER: I'm sorry, and I think that at
24 a minimum, your Honor, I think we should -- I think the
25 Court should decide the preliminary injunction now, but

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1 we should get out from the Office of the Attorney
2 General whether the Governor has authorized a bankruptcy
3 that has done the act that we were attempting to enjoin
4 and that they knew we were attempting to enjoin and that
5 they've known for the last two weeks and that they're
6 filing briefs on saying that it's not ripe. The
7 attorneys for the Government have represented to this
8 Court that our motion is not ripe.

9 THE COURT: I just received a note from my law
10 clerk that says the bankruptcy was filed at 4:06.

11 MR. KING: Right. Your Honor, so what we'd
12 like to do here is amend our emergency motion for
13 temporary restraining order and get it and request from
14 this Court an order enjoining the Governor and the
15 Emergency Manager from taking any further action in the
16 bankruptcy proceeding, and we'll modify our order to that
17 effect.

18 MR. WERTHEIMER: I would join that as to the
19 Governor. We have not sued the Detroit Emergency
20 Manager, but I would orally join in that motion as to the
21 Governor and the Secretary of the Treasury.

22 MR. CANZANO: I would say the same in our case.
23 We're not joining their motion but we're making a motion
24 in our case that would be the same as theirs only against
25 the Governor.

10

1 THE COURT: Granted, as to all of your
2 requests.

3 How soon are you going to present me with an
4 order?

5 MR. KING: Right now.

6 THE COURT: All right.

7 MR. KING: We just need to mark up the order
8 that we have for the Court.

9 THE COURT: Absolutely.

10 MR. QUASARANO: Your Honor, if I may, we would
11 ask that the Court stay enforcement of the order, and
12 your ruling on that would be appreciated at this time.

13 THE COURT: Denied.

14 MR. QUASARANO: Thank you. We'll present an
15 order as soon as possible.

16 THE COURT: Thank you.

17 MR. QUASARANO: Thank you, Judge.

18 MR. WERTHEIMER: Your Honor, we will need a few
19 minutes to prepare a written order, but if we can --

20 THE COURT: Well, sir, would you like to copy
21 that and modify what they're doing? My law clerk will be
22 happy to help you.

23 MR. WERTHEIMER: Thank you, your Honor.

24 THE COURT: As to your stay, you'll be getting
25 that to me in --

1 MR. QUASARANO: be I can just make a call
2 and get an order over to you right yet today.
3 THE COURT: Sure. You can even ~~hand~~handwrite it.
4 I don't care how we do it. You can run it over here, fax
5 it over here; whatever gets you the job done. Time is of
6 the essence.
7 MR. QUASARANO: I appreciate that.
8 MR. KING: (Approaching the bench.)
9 Your Honor, Ron King again on behalf of the
10 Plaintiffs. If we could go back on the record.
11 THE COURT: Excuse me.
12 MR. KING: We'd like to set the sequence of
13 events in terms of how things have transpired in the last
14 hour, if you will. Just for the record, our motion for
15 emergency temporary restraining order was filed at
16 3:37 p.m.; that is, today, July 18th. We promptly, well
17 in advance of 4 o'clock and probably within -- well,
18 actually, we had delivered prior to the filing time at
19 3:37 Judge's copies to chambers for your review.
20 Then we waited for the Attorney General, who
21 doesn't feel compelled to make an appearance here in this
22 case because he hasn't actually been officially retained
23 yet, but, nevertheless, as a courtesy we waited for him
24 to appear, which he came upstairs sometime around 4:10.
25 We understand the bankruptcy filing was at 4:05?

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1 THE COURT: 4:06.
2 MR. KING: 4:06. The Court took the bench at
3 approximately 4:20. And to the extent your Honor has had
4 an opportunity to read the papers and was inclined to
5 make a ruling, if you'd be willing to put that on the
6 record, then in the -- when we do seek dismissal of the
7 bankruptcy proceeding, we'll have some clear record of
8 the sequence of events here.
9 MR. WERTHEIMER: Just to add, in terms of the
10 sequence of events, I did advise by telephone
11 Mr. Quasarano of the fact that I would be in court and
12 that it was my understanding that Clark Hill was going to
13 be in court seeking a temporary restraining order. I
14 talked to him by phone before 4 this afternoon, sometime
15 between 3:30 and 4.
16 MR. QUASARANO: And I could confirm that
17 Mr. Wertheimer gave me the professional curtesy of
18 letting me know that there was a hearing being planned.
19 I had no -- we have no personal knowledge in our division
20 of a bankruptcy being filed any certain time or date, so
21 there is nothing we could provide in terms of a response
22 that there is going to be a bankruptcy filed. So we
23 learned it as everyone else learned.
24 THE COURT: All right. And obviously I heard
25 this was happening. I had another hearing that was

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1 supposed place at 4 o'clock, and I understood
2 this was a very important issue, and we obviously have a
3 hearing scheduled, another hearing scheduled, at
4 9 o'clock on Monday.
5 So I advised my law clerk that we had a
6 4 o'clock hearing that wasn't going to take very long,
7 and whenever you all got here and that we would wait for
8 all of the attorneys, we would then have a hearing and to
9 let me know when everybody was in place and then I would
10 come out.
11 So that's exactly what happened. She let me
12 know everybody was here, gave me the paperwork to look
13 over, and, of course, I did just that. And we got out of
14 here as quickly as we could, obviously not in time
15 because 4:06 occurred and they did what they were going
16 to do, which I know you all raised here.
17 I did have an opportunity to -- with review of
18 what was filed, and you're asking me what I would have
19 done, and it was my intention, after reviewing what you
20 had filed, in addition to other research that my capable
21 externs from Cooley and from Michigan State, as well as
22 my very capable law clerk pulled for me, I reviewed
23 constitutional provisions, I reviewed legislative intent,
24 I reviewed what you all provided me, I reviewed a lot of
25 information in the last few hours, and it was my

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1 intention to grant you your request completely.
2 MR. KING: Thank you, your Honor. Appreciate
3 your clarifying the record.
4 MR. WERTHEIMER: Thank you, your Honor.
5 Your Honor, we have a proposed order.
6 THE COURT: You may approach. Thank you.
7 MR. WERTHEIMER: Thank you. It is handwritten.
8 (Approaching the bench.)
9 THE COURT: No problem.
10 MR. WERTHEIMER: And for caption, it just says,
11 at this point, Flowers Caption.
12 THE COURT: Okay.
13 MR. WERTHEIMER: I had some help in drafting
14 too if you can't read the --
15 THE COURT: We'll make it work.
16 MR. WERTHEIMER: Okay. Thank you, Judge.
17 MR. KING: We may be back tomorrow, your Honor.
18 MR. WERTHEIMER: We may be back too,
19 your Honor. And if we are, I will be in a suit.
20 THE COURT: It's okay. As long as your body is
21 covered, I don't care what's it's covered with.
22 MR. KING: I think with respect to the present
23 motion before you, we have an order in place and
24 appreciate you making the accomodation and time for us
25 today. Thank you.

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1 THE COURT: No problem.
2 Now, if you're back tomorrow, what is it going
3 to be for?
4 MR. KING: We might file a mandamus action
5 requiring the EM to withdraw the Chapter 9 filing.
6 THE COURT: Will this require time on the
7 record?
8 MR. KING: Yes.
9 THE COURT: Okay. My time restriction is that
10 I have my morning free until about 1:30. Can you get it
11 here before 1:30?
12 MR. PATTWELL: Yes.
13 MR. KING: Absolutely.
14 THE COURT: I'll make myself available all
15 morning until 1:30.
16 MR. KING: Thank you, your Honor.
17 THE COURT: Okay.
18 MR. CANZANO: May I approach, your Honor? I
19 have an order drafted also.
20 THE COURT: You may.
21 MR. CANZANO: (Approaching the bench.)
22 THE COURT: Okay. We'll make you copies, and
23 this is our copy.
24 Anything else for the record?
25 MR. KING: No, your Honor. Thank you.

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1 MR. WERTHEIMER: No, your Honor. Thank you.
2 THE COURT: That's all for the record. Thank
3 you.

4 (At 4:38 p.m., the matter is
5 concluded.)
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1 STATE OF MICHIGAN)
2) SS.
3 COUNTY OF INGHAM)
4

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6 CERTIFICATE OF REPORTER

7 I, Melinda I. Dexter, Certified Shorthand
8 Reporter, do hereby certify that the foregoing
9 17 pages comprise an accurate, true, and complete
10 transcript of the proceedings and testimony taken in the
11 case of The General Retirement System of the City of
12 Detroit, et al., versus Kevyn D. Orr, et al., Case
13 No. 13-768-CZ, and Gracie Webster, et al., versus the
14 State of Michigan, et al., Case No. 13-734-CZ, and
15 Robbie Flowers, et al., versus Rick Snyder, et al., Case
16 No. 13-729-CZ, on Thursday, July 18, 2013.

17 I further certify that this transcript of the
18 record of the proceedings and testimony truly and
19 correctly reflects the exhibits, if any, offered by the
20 respective parties. WITNESS my hand this the eighteenth
21 day of July, 2013.

22 

23 Melinda I. Dexter, RMR, RPR, CSR-4629
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